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OPLA~Notes

Nonpartisan Quarterly Newsletter

December 1997

Publication of the Office of Policy and Legal Analysis
for the Maine State Legislature
Volume 1, Issue 4

Newsletter Greetings

Welcome to the fourth issue of OPLA~Notes for 1997, a quarterly publication of the Legislature's nonpartisan Office of Policy and Legal Analysis. This edition of OPLA~Notes includes articles on the electric industry restructuring legislation passed in May of 1997, the U.S. Supreme Court decision on assisted suicide, legislative rules passed by the 118th Legislature and Second Regular Session bill information. This edition also provides a listing of Executive Orders passed by the Governor and provides useful Internet sites. In keeping with our nonpartisan status, the articles present the issues with a legislative perspective, but without making judgments or editorializing. As always, we welcome your comments or suggestions.

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Electric Utility Industry Restructuring in Maine

Five bills (LDs 1804, 1732, 1794, 1785 and 1798) were introduced to the 118th Legislature proposing various ways of restructuring the electric utility industry. These bills were referred to the Joint Standing Committee on Utilities and Energy. The committee employed an innovative approach to examining the many complex issues raised by restructuring: all-day, structured forums in which stakeholders and experts from Maine and from around the country discussed and debated the various issues with the committee. After these forums and many subsequent work sessions, the committee drafted new legislation that was reported to the full Legislature in the form of an amendment to LD 1804. The committee amendment was approved without further amendment by both houses and on May 29, 1997 the Governor signed into law “An Act to Restructure the State’s Electric Industry”, Public Law 1997, Chapter 316.

From their inception over a hundred years ago, electric utilities have been regulated as monopolies under the theory that they are “natural monopolies,” and as their product and services can most economically be produced and provided by a monopoly. This theory, as it applies to generation services, has been rethought and generally rejected in recent years. Restructuring of the industry in order to remove the monopoly of generation services and introduce competition is generally regarded as one of the most significant and perhaps one of most complex policy issues in the history of the electric industry.

Public Law 1997, Chapter 316 establishes retail competition for the purchase and sale of electricity beginning March 1, 2000. The effect of this change is to remove the utility monopoly over generation services. The law preserves Maine Public Utilities Commission regulation of transmission and distribution services, which will remain monopoly services.

Divestiture Provisions

In order to effect a transition to a competitive marketplace for electricity sales, the Law requires Central Maine Power Company, Bangor Hydro-electric Company and Maine Public Service Company by March 1, 2000 to divest most generation-related assets and business functions. It also requires these utilities to sell the rights to the energy and capacity from the assets that are not required to be divested. The Law permits the Public Utilities Commission to require Central Maine Power Company, Bangor Hydro-electric Company and Maine Public Service Company to divest their ownership interests in Maine Yankee Atomic Power Company on or after January 1,

2009.

Stranded Costs Provisions

The Law permits electric utilities a reasonable opportunity to recover legitimate, verifiable and unmitigable costs (often called “stranded costs”) that are otherwise unrecoverable as a result of retail competition in the electric industry.

Marketing by T&D Utilities

The Law allows Central Maine Power Company and Bangor Hydro-electric Company to market and sell electric power through separate but affiliated corporate entities, provided certain standards of conduct are met. However, the Law caps the permissible market share acquired by marketing affiliates of Central Maine Power Company and Bangor Hydro-electric Company within their respective transmission and distribution service territories at 33%. It prohibits affiliates of Central Maine Power Company and Bangor Hydro-electric Company from providing so-called “standard offer service” (see consumer protection provisions) for more than 20% of the load within their respective service territories. It also prohibits any entity or affiliate of an entity that purchases more than 10% of the stock of Central Maine Power Company or Bangor Hydro-electric Company from providing competitive electric power service and further provides that if the Public Utilities Commission determines the purchase results in a utility affiliate gaining unfair market advantage, the utility must divest its marketing affiliate.

The Law allows Maine Public Service Company to market and sell electricity through a separate, affiliated corporate entity in accordance with standards of conduct established by the Public Utilities Commission. It also allows consumer-owned utilities to market and sell power only within their service territories and requires the Public Utilities Commission to limit or prohibit sales by competitors in consumer-owned utilities’ service territories if allowing such sales would cause these utilities to lose their tax-exempt status.

Billing and Metering Provisions

The Law causes billing and metering services to be subject to competition beginning March 1, 2002 and permits the Public Utilities Commission to establish an earlier beginning date for competition for billing or metering provided that the beginning date is no earlier than March 1, 2000.

Consumer Protection Provisions

The Law establishes a standard-offer service for consumers who do not seek or take power in the competitive marketplace (providers of the service will be chosen by competitive bidding procedure conducted by the Public Utilities Commission.) It also prohibits disconnection of service to consumers who fail to pay generation charges but permits disconnection of customers who fail to pay the standard-offer service charge. The Law also establishes various consumer protection standards, including specific protections for residential consumers and other consumers with small energy needs (e.g., restrictions on telemarketing by competitive providers and information disclosure requirements for competitive providers). The Law establishes licensing requirements for all competitive electricity providers and grants the Public Utilities Commission new enforcement authority to protect consumers.

The Law preserves low-income assistance programs funded through transmission and distribution rates but directs that alternative funding mechanisms be proposed.

Renewables/Conservation Provisions

The Law establishes a 30% renewable re-source portfolio requirement for competitive electricity providers and establishes a program funded through voluntary contributions for renewable resource research and development. It also requires the commission to establish a wires charge for funding conservation programs at a level comparable to the funding level in place in 1999.

Consumer Education Provisions

The Law requires electric bill charges to be “unbundled” (separating charges for generation services from other services) beginning in 1999. It also requires the Public Utilities Commission to develop a consumer education program and requires the commission to organize an advisory board to guide the development of the education program.

Other Provisions

The Law requires the Public Utilities Commission to determine the most efficient means of ensuring all portions of the state are connected to the New England grid so that all portions of the state can take full advantage of competition. It also prohibits fees for entry and exit from a utility system. It requires the Public Utilities Commission to monitor the development and conduct of the regional independent system operator (which will coordinate the dispatch of power through the system) and

to advocate for Maine ratepayer interests at the Federal Energy Regulatory Commission with regard to issues concerning the independent system operator. The Law requires Central Maine Power Company, Bangor Hydro-electric Company and Maine Public Service Company to offer certain transition services and benefits to employees displaced by electric industry competition and funds the costs of these services and benefits through a wires charge.

The Law requires the Public Utilities Commission to annually report to the Legislature on the implementation of retail access and establishes mechanisms to address certain contractual difficulties created by the restructuring of the electric industry.

The Law took effect on September 19, 1997. The bill directs the Public Utilities Commission to undertake a number of proceedings before March 1, 2000 to handle certain implementation details (e.g., determine the actual amount of recoverable stranded costs, establish particular standards for competitive providers. Many of these proceedings are major substantive rule-making and so the resulting administrative policies will require approval of the Legislature before they can take effect.

The Law does not address the issue of “securitization.” This is a concept utilities have put forth for addressing certain issues related to stranded costs. The concept was set aside by the Utilities and Energy Committee. The committee intends to take up the issues surrounding securitization during the Second Regular Session.

Did You Know?

The bridge which connects Orr’s and Bailey Islands is known as the Crib Bridge. It was built in 1926 and it is unusual for its honeycomb granite block structure which allows the tide to flow through freely. It is the only bridge of its kind in the United States. The only other bridge like it is found in Scotland.

There are more lighthouses in Maine than there are in any other state of Maine’s size. There are approximately 71 lighthouses between Boon Island off the Town of York, Maine’s tallest light-house, and West Quoddy Head in Lubec. The oldest lighthouse in Maine is Portland Head Light, built in 1791 during George Washington’s administration.

Second Regular Session Bill Requests

The Legislative Council has authorized the introduction of 204 bills filed by legislators. In addition, approximately 71 bills have been filed by departments, independent agencies and the Governor. Other bills that are authorized by study commissions, major substantive rules review and government evaluation review are anticipated to be introduced during the Second Regular Session.

Assisted Suicide: An issue for the States to decide

In a pair of cases decided in June of 1997, the United States Supreme Court ruled that the U.S. Constitution contains no right to assisted suicide. In so ruling, the Court maintained that the State legislatures are the appropriate decisionmakers to sift through the moral and ethical facets of the question of assisted suicide, and to determine the needs and desires of citizens as they face the issue. The Court is relying on the “legislative institutional competence” to weigh the appropriate factors and to “strike the proper balance between the interests of the terminally ill, mentally competent individuals who would seek to end their suffering and the State’s interests in protecting those who might seek to end life mistakenly or under pressure.” The Justices have clearly indicated their expectation that, should similar questions make their way to the Court in the future, developments in how the States address end of life care and the interests of their citizens may lead to a different ruling.

The decisions in the two cases mean that the States are free to address physician assisted suicide as a matter of state policy. In *Vacco, Attorney General of New York, et al. v. Quills, et al.* No 95-1858, 65 U.S.L.W. 4695 (U.S. June 26, 1997) physicians and terminally ill patients in New York challenged a state law that prohibits assisted suicide, claiming it violated the Equal Protection Clause of the Fourteenth Amendment. They argued that because New York permits a competent person to refuse life sustaining medical treatment, and because the refusal is “essentially the same thing” as physician assisted suicide, the state ban on assisted suicide violates the guarantee of Equal Protection of the laws. Terminally ill patients on life support are permitted to choose to have the treatment terminated, which will hasten their death. Terminally ill patients not on life support, on the other hand, have no such option to hasten their death. The plaintiffs claimed that the difference in permissible choices is

unconstitutional discrimination. The federal district court upheld the law, but the Second Circuit Court of Appeals reversed. The U.S. Supreme Court, in a unanimous decision, reversed again and upheld the New York law banning assisted suicide. It ruled that the State does have the right to ban assisted suicide. In an opinion written by Chief Justice Rehnquist, the Court rejected the argument that the refusal of life sustaining treatment is essentially the same as physician assisted suicide. The Court found no unequal treatment of the laws in the New York case: Everyone who is competent has the right to refuse unwanted lifesaving medical treatment, no matter what their condition, and no one is permitted to assist a suicide.

In *Washington, et al. v. Glucksburg et al.*, No. 96-110, 65 U.S.L.W. 4669 (U.S. June 26, 1997) physicians, terminally ill patients and others challenged the Washington law banning assisted suicide, claiming the law violated the Fourteenth Amendment's Due Process Clause. They argued that a liberty interest, protected by the Due Process Clause, extends to a personal choice by a mentally competent, terminally ill adult to commit physician assisted suicide. The federal district court agreed, relying on *Planned Parenthood of Southeastern Pennsylvania v. Casey* and *Cruzan v. Director, Missouri Department of Health*, and the Ninth Circuit Court of Appeals affirmed. The U.S. Supreme Court unanimously reversed, holding that Washington's prohibition against causing or aiding suicide does not violate Due Process. In the opinion written by Chief Justice Rehnquist, the Court relied on past decisions to conclude that the asserted "right" to assistance in committing suicide is not a fundamental liberty interest protected by the Due Process Clause. The Court distinguished *Cruzan* (which recognized a constitutionally protected right to refuse life saving hydration and nutrition) by asserting that the right to refuse life sustaining treatment is based on the traditional, common law rule that forced medical treatment was a battery. The Court refused to read *Casey* (which recognized a woman's choice to terminate a pregnancy as a constitutionally protected liberty interest) as necessarily protecting any and all important, intimate and personal decisions.

Executive Orders Issued

The following Executive Orders have been issued to date by the Governor in FY 1997/1998:

- An Order to Revise and Improve School Construction Policy
 - An Order To Implement the Atlantic Salmon Conservation Plan
-

Legislative Review of Agency Rules Update on Rules Filed in 1997

In 1995 and 1996, amendments to the Maine Administrative Procedure Act (APA) and other laws were enacted giving the Legislature significant new authority to review certain agency rules. Under the new laws, rules designated as “major substantive” may not be finally adopted and enforced by an agency until reviewed by the Legislature. The review process consists of referral of the rules to the appropriate joint standing committee, review and consideration by the committee and issuance of a committee report to the full Legislature. Both bodies of the Legislature consider the committee report and, if passed, present it to the Governor for signature.

In 1997, the first major substantive agency rules were submitted to the Legislature for review under the new law. During the First Regular and First Special Sessions of the 118th Legislature, the Legislature took the following action on major substantive agency rules.

Review of provisionally adopted major substantive rules in 1997

- In 1996, the first year of operation of the new rules review law, 24 new laws were enacted authorizing the development of major substantive rules that require legislative review prior to final agency adoption.
- Of the 24 authorized, 11 major substantive rules proposed by 6 different agencies were submitted for review in 1997.
- Each rule was introduced to the Legislature in the form of a Resolve and referred to the appropriate committee. A public hearing was held on each resolve and at least one work session was held on each. Three of the resolves required more than one work session.
- Following review, the Legislature enacted resolves that authorized all of the 11 rules submitted in 1997. Seven were authorized without changes and 4 were authorized only if the agency made specified changes. Eight of the resolves were finally passed as emergency measures.
- One rule authorized in 1996 was redesignated “routine technical” in 1997 and will not require legislative review when it is adopted. Other rules authorized during 1996 and not submitted by agencies for legislative review are not authorized to be adopted and implemented. They must wait until at least the second regular session to obtain

legislative approval.

New major substantive rules authorized in 1997

· During the First Regular Session and First Special Session of the 118th Legislature, the Legislature enacted laws that authorized the development of 28 new major substantive rules requiring legislative review (see chart for a list of Major Substantive Rules Authorized in 1997).

Amendments to the APA affecting major substantive rules

Public Law 1997, chapter 196 (LD 1115) was enacted in 1997 making the following technical changes in the Maine Administrative Procedure Act that relate to legislative review of major substantive rules.

· When agencies file provisionally adopted major substantive rules with the Legislature for review, they must also file a copy with the Secretary of State. This means that an “official” copy of the provisional rule that is submitted to the Legislature for review remains on file with the Secretary of State should there be a need in the future to compare the rule submitted for review with the rule finally adopted by the agency as authorized by the Legislature. The Secretary of State is the repository for all other official filings related to rule making under the APA.

· When agencies file finally adopted major substantive rules with the Secretary of State following legislative review, they must cite the Legislative Resolve that authorized final adoption. This change will make it easier to trace the legislative history of a major substantive rule.

Early filing deadline

The Legislative Council has established Friday, February 20, 1998 as the deadline for agencies to file major substantive rules with the Legislature for review during the Second Regular Session. This deadline is to ensure that the Legislature will have sufficient time to review rules submitted by agencies this session.

Internet Intersection

Glossary of Web Terms

The following terms are common among World Wide Web (WWW) users:

Bookmark: A bookmark is a linked directory of web pages which is kept within a browser.

Browser: A program used to connect to sites on the World Wide Web. More generally, a program that accesses information on the Internet. Examples of WWW browsers are Netscape Navigator and Microsoft Explorer.

Hits: Documents or references to documents that are returned in response to a query, also called matches or matching queries.

Hypertext Link: A highlighted [shown in color] or underlined word or image on a Web page that when clicked connects or links to another location with related information. [Links provide an easy way to move about the Internet]

Search Engine: A computer program that locates information through the use of keywords. The search engine usually resides in a host computer and provides information service to other computers on request.

Uniform Resource Locator [URL]: Uniform Resource Locator is a unique address on the World Wide Web.

Policy and Government

CNN's US Supreme Court 1997-98 Session: A quick way to get the latest updates and happenings during the 1997-98 session. The site contains several links to other US Supreme Court on-line resources. <http://www.cnn.com/US/9710/scotus/>

US EPA Envirofacts Warehouse Maps on Demand: Create a map to display environmental information based on EPA data sets for the entire United States. Includes queries by latitude and longitude coordinates, zip code, county, or watershed. <http://www.epa.gov/envirofw/html/mod//index.html>

Thomas: Federal legislation from 1973 to present, as well as links to other governmental information. <http://thomas.loc.gov/>

Provides links to “hot” topics in government by subject. <http://thomas.loc.gov/home/html.arc/hot-subj.html>

United Nations: For those interested in international law issues. The site covers the following topics: peace and security, economic and social development, human rights, and humanitarian affairs. <http://www.un.org/>

FedWorld Information Network: This site offers a comprehensive index of federal government pages. Search the entire FedWorld page or search other FedWorld hosted web sites. <http://www.fedworld.gov/#usgovt>

United States Code: Search the federal statutes in force as of January 16, 1996 by title. Also assists with tracking recent amendments to the U.S. Code. <http://www.law.cornell.edu/uscode/>

Maine State Legislature: The State of Maine statutes are now available through the Legislature's homepage. Please note that the on-line statutes include the new laws passed in 1997. <http://www.maine.gov/legis>

Office of Policy & Legal Analysis: Offers access to legislative reports, bill summaries, committee jurisdictions, quarterly newsletter, study commission information, and government evaluation information. <http://www.maine.gov/legis/opla>

Law and Legislative Reference Library: Provides access to URSUS catalog, collections information, reference information, legislative history instructions and interlibrary loan information. The latest addition includes lists of Justices for the Maine Supreme Judicial Court and Maine Attorney Generals, both from 1820 to present. <http://www.maine.gov/legis/lawlib>

Office of Fiscal and Program Review: Offers access to municipal funding, General Fund budget, Highway Fund budget, and the 1996 Compendium of State Fiscal Information. <http://www.maine.gov/legis/ofpr>

Office of Revisor of Statutes: This is the latest addition to the Legislature's homepage. The ROS page currently lists an introduction to the office, on-line publications and staff listings. <http://www.maine.gov/legis/ros>

Technology

Netguide: Guide to Internet sites which lists ten topic areas, including computing and Internet. Check out the latest software by searching a database of over 100,000 downloadable shareware, freeware and demo files. Stay up to date on the latest Internet sites with Netguide's Top 10 Internet Sites and Internet Site of the Day. <http://www.netguide.com>

News

American Journalism Review (AJR) News Link: Offers a comprehensive index of 3,622 newspapers from around the world, as well as several on-line magazines and radio/television resources. <http://www.newslink.org>

The New York Times: Keep up with the latest book reviews. Although the Web version of the Times requires registration and the use of a password, the service is free of charge. <http://www.nytimes.com/>

General Interest

Maine Arts Commission: Peruse the commission's calendar of meetings, guidelines for arts funding, commission publications, and a national arts directory with hypertext links. <http://www.mainearts.com>

OPLA PUBLICATIONS

A listing of study reports of legislative committees and commissions categorized by year is available from OPLA. For printed copies of any of these publications, please contact the Office of Policy and Legal Analysis at 13 State House Station, Augusta, Maine 04333 (287-1670) or stop by Rooms 101/107 of the State House. Legislators and members of the public may request a copy at no charge. Additional copies of the publications are available at a nominal cost. In addition, many of the legislative studies staffed by OPLA during the 117th and 118th Legislature are available on the OPLA website at <http://www.maine.gov/legis/opla>

Legislative Studies

Information about legislative studies staffed by the Office of Policy and Legal Analysis during the interim can now be found on the Internet at www.state.me.us/legis/opla/118study.htm. These studies include the following:

- Banking and Insurance Subcommittee on Genetic Testing
- Commission to Examine Rate Setting/Financing of Long-term Care Facilities
- Commission to Study the Effects of Government Regulation and Health Insurance

Costs on Small Business

- Commission to Study the Funding and Distribution of Teletypewriters and Other Telecommunications and Equipment for People with Disabilities
- Joint Select Committee on Research and Development
- Study to Determine the Adequacy of Services to People with Mental Retardation
- Task Force to Study the Cost Effectiveness of the Child Development Services System
- Task Force to Study Equal Economic Opportunity
- Task Force to Study the Feasibility of a Single Claims Processing System for Third-Party Payors of Health Care Benefits

The information available from these study web pages includes study meeting dates, study commission membership, meeting agendas and meeting summaries. Once the study commissions release their final reports, these will also be made available from the OPLA website. For further information about any of these studies, please contact OPLA at (207) 287-1670.

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We welcome your comments and suggestions.

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